IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7470 OF 2002

Shri Madhukar Mahadeo Shirsekar and ors. .. Petitioners

Vs.

Smt. Kamlabai G. Karangutkar and ors. .. Respondents

Mr. B.P. Abahale for petitioners.
Mr. D.A. Patil, AGP for Respondent Nos.2 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : June 06, 2006.

P.C.:

1. Heard the learned counsel for the petitioners.

The injunction application at Exh.5 filed in RCS No.51 of 1999 came to be allowed by the learned Civil Judge, Senior Division, Sindhudurg-Oros on 4/5/2000 by confirming the ex parte ad-interim injuction passed earlier on 5/10/1999. The said order came to be challenged in Civil Misc. Appeal No.15 of 2000 which was dismissed by the learned Additional District Judge on 30/6/2001 and hence this petition.

2. While opposing the application for temporary injunction the learned counsel for the defendants had relied upon the documents, namely, possession receipt

submitted in RD No. 18 of 1982 arising from the execution of the decree in RCS No.55 of 1961. The trial court perused the copy of the decree passed in RCS No.55 of 1961 and recorded its finding that the suit property was not the subject matter of the said decree. It further observed that the suit property had come in possession of the plaintiff in pursuance of the sale under Section 32-B of the Bombay Tenancy and Agricultural Lands Act, 1948 and Mutation Entry Nos.294 and 370 and the 7 x 12 extract proved the same. These documents showed that the plaintiff was in possession of the suit property and, therefore, there was a case made out to grant injunction in favour of the plaintiff.

3. The learned District Judge in Misc. Civil Appeal No.15 of 2000 agreed with the findings of the trial court that the plaintiff was in possession of the suit land and, therefore, the appeal has been dismissed. These concurrent findings do not call for any interference as they do not suffer from any error apparent on the face of the record and hence there is no case made out to entertain this petition under Article 227 of the Constitution.

4. The petition is summarily rejected. Trial of the suit is expedited. Needless to mention that all issues kept open to be decided by the trial court on merits.

(B.H. Marlapalle,J.)